

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,

v.

JOSE COLON,

Defendant.

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ID. No. 0501004460

Submitted: November 30, 2005

Decided: March 24, 2006

OPINION

*Defendant's Challenge to the State's Motion to Declare Defendant an Habitual Offender.
Denied.*

Appearances:

John Edinger, Esquire, Wilmington, Delaware.
Assistant Public Defender

Victoria Witherell, Esquire, Wilmington, Delaware.
Deputy Attorney General.

JOHN E. BABIARZ, JR., JUDGE.

Defendant Jose Colon has challenged the State's motion to have the Court declare him a habitual offender, pursuant to 11 *Del. C.* § 4214(a). Defendant argues that the time between his sentencing for Conspiracy and his arrest 20 days later for Robbery and Possession of a Firearm During the Commission of a Felony (PFDCF) was not sufficient for rehabilitation. The pertinent dates are as follows:

1. July 30, 1996 – sentenced for Attempted Burglary Third Degree
2. **December 15, 1997 – sentenced for Conspiracy Second Degree**
3. **January 4, 1998 – arrested for Robbery First Degree and PFDCF**
4. August 10, 1998 – sentenced for Robbery First Degree and PFDCF
5. September 7, 2005 – convicted of Robbery First Degree.

In *Hall v. State*, the Delaware Supreme Court held that § 4214(b) applies only to those offenders who have been twice convicted of the specified felonies in prior proceedings where the second conviction took place on account of an offense which occurred after sentencing had been imposed for the first offense.¹ In *Buckingham v. State*, the Court held that the same logic applied to § 4214(a), which requires three separate, successive convictions before the sentence of life in prison may be imposed.²

¹473 A.2d 352, 357 (Del. 1984).

²482 A.2d 327, 330 (Del. 1984).

This Court has consistently found that the trigger mechanism for habitual offender status is a series of sequential convictions and is not contingent upon the defendant having received counseling or any particular vehicle for rehabilitation³ other than “separate encounters with the criminal justice system.”⁴ In this case, the record shows that Defendant’s conviction for conspiracy and subsequent for robbery and PFDCF were separated by approximately eight months. Contrary to Defendant’s assertion, the arrest date for the robbery and PFDCW is irrelevant.

Defendant’s motion in opposition to the State’s motion to declare Defendant a habitual offender under § 4214(a) is ***Denied***. Defendant’s sentencing hearing shall proceed as scheduled on March 31, 2006.

It Is So ORDERED.

Judge John E. Babiarz, Jr.

JEB,jr/ram/bjw
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³*State v. Walker*, 2002 WL 32071668 (Del. Super.); *State v. Lecato*, 2001 WL 1628311 (Del. Super.); *State v. Stanley*, 1998 WL 961766 (Del. Super.); *State v. Garnett*, 1998 WL 442706 (Del. Super.).

⁴*Buckingham v. State*, 482 A.2d at 330.

